



COVID Compensatory Services Information Paper

September 22, 2020

The United States Department of Education's (USDOE) COVID-19 related guidance describes specific instances in which schools must make an individualized determination whether and to what extent compensatory services may be needed, including to make up for any skills that may have been lost. Compensatory education services are mandated through the dispute resolution process. COVID compensatory services are determined and agreed upon by the IEP team. Schools have flexibility and can be creative in developing compensatory services. 20 U.S.C. § 1415(i)(2)(C)(iii) and 34 C.F.R. § 300.516(c)(3).

COVID compensatory services are determined by looking at the totality of the circumstances for each student, including parental input, and determining the amount of service, if any, needed to remedy the educational deficits resulting from COVID 19 and the inability to provide a free and appropriate public education (FAPE). **COVID compensatory services, if needed, will vary on an individualized, case-by-case basis.**

Federal, state and local educational agencies (LEAs) are required to provide both equitable access to general education opportunities and continue to provide a free and appropriate public education (FAPE) to students with disabilities to the maximum extent possible. Many students will receive a FAPE during a period of closure or distance learning; however, it is acknowledged, that despite best efforts and creative solutions, there may be some students who may not receive a FAPE over the course of a school closure or distance learning. Therefore, IEP teams will need to make an individualized determination for each student around his or her COVID compensatory services once the full continuum of educational services is available. COVID compensatory services should be offered that allow the student to continue to participate in and make progress in the general education setting, or to progress at an appropriate pace in light of the child's circumstances, once students may safely return to the school campus.

"There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." 21 IDELR 723 (9th Cir. 1994).

COVID compensatory services are a **QUALITY** decision, not a quantity decision. 18 IDELR 350 (1991). A student with a disability can receive COVID compensatory services even if they are past the age of eligibility under IDEA. 34 IDELR 292 (OSEP 2000).

FREQUENTLY ASKED QUESTIONS:

1) What are COVID compensatory services?

The term "COVID compensatory services" refers to services, as determined by an IEP team, needed to remedy a student's skill and/or behavioral loss and/or lack of progress that resulted from an LEA's inability to provide FAPE during the school closure or distance learning. COVID compensatory services should be considered only after the student receives services to recover the lost skills or behavior or to make progress to the level(s) determined appropriate prior to the school closure or distance learning.

2) What are the considerations for COVID compensatory services?

- Must ensure the student receives FAPE.
- Must support the student in regaining skills that have been lost during the period in which special education and related services were unable to be provided.
- Must be directly linked to the denial of educational benefit, including any significant decline in the student's skills that occurred as a result of a student not receiving services during the school closure or distance learning.
- Must clearly be additional targeted services and not take away from or replace existing general education instruction and/or special education services.

3) When should COVID compensatory service discussions begin?

COVID compensatory service discussions shouldn't really happen in earnest until the full continuum of educational opportunities resume. When the COVID compensatory services for an individual student are identified, a plan should be discussed and developed with the IEP team, identifying how the services will be provided.

4) How is a COVID compensatory service decision different than a determination about the student's current need for FAPE, which may have changed since school closure or distance learning (ex. increased mental health needs)?

Additional needs not previously identified by the IEP team prior to school closure are not eligible for consideration for COVID compensatory services. In making an individualized determination as to whether a student requires COVID compensatory services, schools should consider a variety of factors, including but not limited to:

- services provided during the period of school closure or distance learning,
- ability of the student to access any services provided during the period of school closure or distance learning,
- significant loss in skills, progress or lack of progress made on IEP goals, and
- parental input.

5) Can parents refuse COVID compensatory services?

Yes, parents can refuse an offer of COVID compensatory services. It is recommended that LEAs document parental input in the determination of the need for COVID compensatory services, the proposed plan to provide

the services, as well as the parent's refusal of the services offered. Prior written notice will be sent to document an offer of COVID compensatory services and the parent's refusal. If a parent refuses the offer, the LEA has met its obligation by making the COVID compensatory services available.

6) What happens if a parent disagrees with the LEA's offer of COVID compensatory services?

Parents retain their procedural safeguards in the event they believe their child has been denied a FAPE. Parental rights under the IDEA have not been waived. Communication is key when it comes to decisions of services for students with disabilities. The IEP team is encouraged to reconvene to discuss additional considerations.

7) How do IEP teams prepare for the meeting discussing COVID compensatory services?

- Prior to the IEP meeting, obtain the following information: Review of the services provided and those disrupted during the period of the school closure or distance learning.
- Determine progress made on IEP goals impacted by the inability to provide FAPE during school closure or distance learning.
- Compare current student performance on IEP goals now vs. ending level of student progress prior to school closure or distance learning.
- Compare progress toward general education standards in relation to peers' current progress.

8) What if there is a lack of measurable data prior to school closure or distance learning?

A student re-evaluation may be needed. This may include nonacademic areas (ex. communication, behavior, fine motor) where it is unlikely that typical peers experienced a significant loss of skills.

9) How do IEP teams determine the plan and calculate services for COVID compensatory services?

Most courts favor looking at what the student actually needs in order to be placed back in the position s/he would have been, based on a quality, individualized decision. 43 IDELR 32. Considerations for this individualized decision include:

- How much and what type of significant skill loss occurred during the school closure or distance learning?
- Is the skill loss directly related to what the student was not able to receive due to the school closure or distance learning, thus denying FAPE?

10) What are possible service delivery options for COVID compensatory services?

- Utilize existing free time during the school day to provide the services
- Lengthen the school day/week/year
- Increase intensity of specially designed services model
- Contract with a third-party service provider
- Provide transportation for COVID compensatory services, if needed
- Other options, as determined by the IEP team

11) What are considerations when determining individual needs in COVID compensatory services?

- Which IEP goals were, and were not, addressed? (Time provided may differ between goals being addressed. New areas of need to be addressed require an amended IEP and are not eligible for COVID compensatory services.)
- Where will the COVID compensatory services take place?
- Which setting(s) will the COVID compensatory services occur in?
- What is the period (time of day, duration) when the COVID compensatory services will be delivered?
- How can the COVID compensatory services be provided without overwhelming the student?

12) Is a student who didn't receive some of the special education and/or related services during school closure or distance learning, but recoups all educational losses in the first few months of school reopening, still entitled to COVID compensatory services?

A student who recoups educational losses quickly when the full continuum of learning options resumes may show no need for COVID compensatory services. The IEP team will make this decision based on student performance, a review of data, test results, grades, progress reports, parent and teacher observations.

13) What is done following the COVID compensatory services meeting?

- The IEP team will document recommendations/refusals related to FAPE considerations and COVID compensatory services in a Prior Written Notice (PWN).
- PWN will be provided to the parent in a timely fashion, setting forth the IEP team's determination regarding COVID compensatory services, including the plan.
- The Service Provider(s) should document COVID compensatory services in a designated service log as the services are completed.
- The IEP team will reconvene after completion of COVID compensatory services to document completion of the plan. During this meeting, the team reviews evidence by service provider logs and documentation in the IEP team meeting, progress reports and other individualized data. This is followed by the PWN and parent procedural safeguards.
- If a parent disagrees with the IEP team decision not to provide COVID compensatory services to their child, the case manager must inform the parent of their dispute resolution options provided under Part B of the IDEA.

References:

Arivett, D. & McCloud, A. (2020). *A World in Repair: Compensatory Education After the COVID-19 Pandemic*. Presentation at LRP's National Institute on Legal Issues of Educating Individuals with Disabilities.

Indiana Department of Education (2020). *Guidelines for Providing Special Education Services During the COVID-19 Pandemic*. Retrieved from: <https://www.sde.idaho.gov/coronavirus/sped/SPED-COVID-19-Q-A-4-3-2020.pdf>

Knutson, L. (2020). *What Does FAPE Look Like During the COVID-19 Crisis?* Sponsored by the Technical Assistance for Excellence in Special Education (TAESE) a division of the Center for Persons with Disabilities at Utah State University.

The United States Department of Education's (USDOE) COVID-19 guidance (2020)

Nebraska Department of Education guidance (2020)

Pennsylvania Department of Education guidance (2020)

Kansas Department of Education guidance (2020)

LRP: Compensatory Education guidance, (7/24/2020)

Julie Weatherly presentation: "Providing Services to Children with Disabilities," (3/12/ 2020)